

REMARKS

Applicant timely filed a Notice of Appeal on April 6, 2009 in response to the Final Office Action mailed February 3, 2009. Applicant also filed a Pre-Appeal Brief Request on April 6, 2009. The Examiner confirmed the rejection of the pending claims in a Notice of Panel Decision From Pre-Appeal Brief Review mailed June 16, 2009. In response to this Notice, Applicant filed a RCE. In this Amendment, Applicant has canceled claims 52, 53, 77, 79 and 82, amended claims 1, 2, 7, 8, 22, 23, 78 and 80, and added new claims 84-99.

THE SECTION 112 REJECTION

The Examiner asserted that the limitation "a majority of said substantially spherical or ellipsoidal body is non-expandable" in claim 2 is not supported by the originally filed Specification, drawings and claims because there is no support in the original Specification for the limitation that the body of the medical device is expandable. Applicant disagrees. Page 26, lines 14-20 of the Specification expressly discloses that the body of the medical device can expand or contract. Indeed, this expansion or contraction can occur at the same or different time from the expansion of the stabilizer. Applicant has amended claim 2 to further clarify the scope of the claim. Applicant submits that all of the pending claims are in proper form pursuant to 35 U.S.C. §112.

THE SECTION 102 REJECTION

Claims 1, 2, 5-8, 12, 15-22, 24-37, 39 and 53 were rejected under 35 U.S.C. §102(b) as being anticipated by Kuslich.

Independent claims 1, 78 and 80 have been amended to require that at least a portion of the at least one expandable component expand radially outwardly from the body to at least partially form

form a stabilizer, and that the at least one expanded component has a perimeter that increases when the at least one expanded component is expanded to form the stabilizer. Kuslich does not disclose the expansion of the perimeter of any component of the medical device. The fabric material is disclosed as being expandable; however, the perimeter of the mid-section of the medical device does not increase. Indeed, Kuslich teaches that the mid-section maintains a set perimeter. For at least these reasons, independent claims 1, 78 and 80 are not anticipated or made obvious by Kuslich.

Dependent claim 2 has been amended to require that the top and bottom portions of the substantially spherical or ellipsoidal body are non-expandable and are designed to maintain a substantially same size and shape when the expandable component is expanded. Similar limitations are included in new claims 96 and 97 that depend from independent claims 78 and 80, respectively. The main body of the medical device of Kuslich is expandable. For at least this additional reason, dependent claims 2, 96 and 97 are not anticipated or made obvious by Kuslich.

Dependent claims 7 and 8 require radial expansion of the of the at least one expandable component. The medical device of Kuslich does not include such a component. For at least this additional reason, dependent claims 7 and 8 are not anticipated or made obvious by Kuslich.

Dependent claim 16 requires the expanded radial width of the at least one expandable component to be variable. Dependent claim 19 requires the thickness of the at least one expandable component to be variable. The medical device of Kuslich does not include such a component. For at least this additional reason, dependent claims 16 and 19 are not anticipated or made obvious by Kuslich.

Dependent claim 21 requires that the at least one expandable component is expandable radially outwardly from the substantially spherical or ellipsoidal body at an angle that deviates from a substantially constant axis. The medical device of Kuslich does not include such a component. For at least this additional reason, dependent claim 21 is not anticipated or made obvious by Kuslich.

Dependent claim 22 requires the at least one expandable component to have an expanded thickness adjacent to the substantially spherical or ellipsoidal body that is different from an expanded thickness of the at least one expandable component at a location radially spaced from the substantially spherical or ellipsoidal body. The medical device of Kuslich does not include such a component. For at least this additional reason, dependent claim 22 is not anticipated or made obvious by Kuslich.

THE SECTION 103 REJECTION

Claims 14 and 23 were rejected under 35 U.S.C. §103(a) as being unpatentable over Kuslich.

Dependent claims 14 and 23 depend from allowable independent claim 1. For at least this reason, dependent claims 14 and 23 are not obvious in view of the teachings of Kuslich.

Dependent claim 23 requires an outer perimeter of the at least one expandable component to include at least one tapered edge in an expanded state. The medical device of Kuslich does not include such a component. For at least this additional reason, dependent claim 23 is not made obvious by Kuslich.

Applicant has added new claims 84-95, 98 and 99 which are directed to a medical device. Applicant submits that new independent claims 84, 93 and 98 include limitations that are not anticipated or made obvious by Kuslich. Applicant also submits that several of the claims dependent

from independent claim 84, 93 and 98 include limitations that are not anticipated or made obvious by Kuslich.

Applicant submits that for at least the reasons set forth above, none of the pending claims are anticipated or made obvious by the teachings of Kuslich.

Respectfully submitted,

FAY SHARPE LLP

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Date

By: _____

BRIAN E. TURUNG

Reg. No. 35,394

1228 Euclid Ave., The Halle Bldg., 5th Fl.

Cleveland, Ohio 44115

Telephone: (216) 363-9000

Facsimile: (216) 363-9001